IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

O R D E R

Ranjit Singh v. State of Rajasthan & Ors.

S.B.CIVIL WRIT PETITION NO.2500/1996
under Article 226 of the Constitution of India.

Date of Order : 23rd May, 2005

P R E S E N T

HON'BLE MR.JUSTICE GOVIND MATHUR

Mr. P.P.Choudhary, for the petitioner.
Mr. Shyam Ladrecha, Addl.Govt.Advocate.

BY THE COURT :

This petition for writ by the petitioner to quash the order dated 3.5.1996 passed by Dy.Inspector General of Police, Jodhpur Range, Jodhpur exercising powers under Rule 23 of the Rajasthan Civil Services (Classification, Control and Appeal) Rules, 1958 (hereinafter referred to as “the Rules of 1958), the order dated 24.8.1995 passed by Superintendent of Police, Jodhpur imposing a penalty of dismissal upon the petitioner and the order dated 26.8.1995 passed by Superintendent of Police, Jodhpur forfeitting salary of the petitioner for the period commencing from 31.1.1992 to 24.8.1995.

The facts necessary to be noticed are that under memorandum dated 17.9.1991 the petitioner was charged for unauthorised absence from duty for the period commencing from 15.6.1991. The petitioner denied the charge levelled, therefore, an inquiry under Rule 16 of the Rules of 1958 was conducted and by order dated 31.1.1992 the petitioner was dismissed from services w.e.f. 15.6.1991.

A challenge was given by the petitioner to the order dated 31.1.1992 before this Court by way of filing a writ petition which came to be accepted by judgment dated 6.4.1995. The Court by judgment dated 6.4.1995 quashed the order imposing penalty of dismissal and directed the respondents to reinstate the petitioner. However, the respondents were set at liberty to proceed with the inquiry from the stage of supplying the copy of inquiry report. The Court left it open for the respondents to consider the question with regard to grant of back wages and other benefits from the date of dismissal to the date of reinstatement at the time of passing final order in the disciplinary proceedings. The Superintendent of police, Jodhpur passed an order dated 19.5.1995 reinstating the petitioner as constable. A copy of the inquiry report was given to the petitioner under an order dated 19.5.1995. The petitioner after receiving the inquiry report submitted his comments under a

representation dated 12.7.1995. The Disciplinary Authority i.e. the Superintendent of Police, Jodhpur after considering the representation dated 12.7.1995 passed the order impugned dated 24.8.1995 holding the petitioner guilty for the charge levelled, accordingly imposed a penalty of dismissal upon the petitioner with immediate effect. The Superintendent of Police, Jodhpur also passed an order dated 26.8.1995 forfeitting the salary of the petitioner for the period commencing from 31.1.1992 to 24.8.1995.

The petitioner being aggrieved by order dated 24.8.1995 passed by the Disciplinary Authoriy preferred an appeal under Rule 23 of the Rules of 1958 before the Appellate Authority i.e. the Dy.Inspector General of Police, Jodhpur Range, Jodhpur. The Appellate Authority by order dated 3.5.1996 rejected the appeal preferred by the petitioner and affirmed the order passed by the Disciplinary Authority. Hence this writ petition is preferred by the petitioner.

A reply to the writ petition has been filed on behalf of the respondents wherein the facts are not much disputed.

I have heard counsel for the parties.

Counsel for the petitioner has given challenge to the orders impugned on various grounds.

The grounds to challenge the order passed by the Appellate Authority are:-

> (1)The order dated 3.5.1996 passed by the Appellate Authority is illegal as the appellate authority failed to consider the appeal in accordance with rule 30 of the Rules of 1958.
>
> (2)The order dated 3.5.1996 is illegal being an unreasoned and non-speaking order.

The first contention of the counsel for the petitioner is that the order passed by the Appellate Authority i.e. the order dated 3.5.1996 is not in consonance with the provisions of Rule 30 of the Rules of 1958. According to the counsel for the petitioner from perusal of the order passed by the Appellate Authority it does not reveal that the compliance of rule 30 was made while considering the appeal.

The sub-rule(2) of Rule 30 of the Rules of 1958 prescribes the method required to be adhered by the Appellate Authority while considering the appeal against an order imposing any of the penalty specified in rule 14 of the Rules of 1958. Sub-rule(2) of rule 30 of the Rules of 1958 reads as under:-

> “30(2)In the case of an appeal against an order imposing any of the penalties specified in rule 14, the appellate authority shall consider.--

(a)Whether the procedure prescribed in these rules has been complied with and if not whether such non-compliance has resulted in violation of any provisions of the Constitution or in failure of justice.

(b)Whether the facts on which the order was passed have been established.

(c)Whether the facts established afford sufficient justification for making an order; and

(d)Whether the penalty imposed in excessive, adequate or inadequate; (and after giving a personal hearing to the Government Servant to explain his case, if he desires so) and after consultation with the Commission if such consultation is necessary in the case, pass order-

(i) setting aside, reducing, confirming or enhancing the penalty; or

(ii) remitting the case to the authority which imposed the penalty or to any other authority with such direction as it may deem fit in the circumstances of the case:"

From perusal of sub-rule(2) of rule 30 of the Rules of 1958 it is apparent that the Appellate Authority is required to deal with various eventualities while adjudicating an appeal preferred giving challenge to an order imposing any of the

penalties specified in rule 14 of the Rules of 1958. The Appellate Authority is under a statutory obligation to see whether the procedure prescribed under the Rules of 1958 has been complied with and if not, whether such compliance has resulted in violation of provisions of the Constitution or in failure of justice, whether facts on which the order was passed have been established, whether the facts established prescribed sufficient justification for making the order and whether the penalty imposed is excessive, adequate or inadequate. The order passed by Appellate Authority does not deal all the above mentioned aspects which are necessarily required to be considered while adjudicating an appeal under rule 23 of the Rules of 1958. The compliance of rule 30 is not formal but essential as it gives an opportunity to examine the entire record of the inquiry and also the implications and effects of the order of punishment. The law framers under rule 30 provided a complete code to consider an appeal with a view to check the powers of Disciplinary Authority. The Appellate Authority is required to examine the compliance of the provisions pertaining to inquiry, justification for making an order as a consequence of an inquiry and also require to examine adequacy of the penalty imposed. The Appellate Authority is guided by rule 30 at one end to protect a civil servant from arbitrary exercise of powers by Disciplinary Authority and at the other end to maintain discipline, control and efficiency in

service. The Appellate Authority bears an important responsibility while considering an appeal, therefore, an appeal is always required to be considered according to the guidelines prescribed under rule 30 of the Rules of 1958. In the present case appeal made by the petitioner does not appear to be considered by taking into consideration all the factors as provided under rule 30. In view of it I am of considered opinion that non-consideration of appeal in accordance with Rule 30 of the Rules of 1958 makes the order of the Appellate Authority dated 3.5.1996 illegal.

It is contended by the counsel for the petitioner that the petitioner in memo of appeal has raised various contentions to challenge the order passed by the Disciplinary Authority but the Appellate Authority without dealing with those contentions rejected the appeal in most mechanical manner.

I have perused the order passed by the Appellate Authority. The Appellate Authority by order dated 3.5.1996 rejected the appeal preferred by the petitioner without assigning any reason. The Appellate Authority has simply mentioned that the record of inquiry and the order passed by Disciplinary Authority was considered and an opportunity of hearing was also allowed to the petitioner and concluded with the finding that the order of dismissal is just and valid.

I am in agreement to the counsel for the petitioner that the order passed by the Appellate Authority is not at all a speaking and reasoned order. The petitioner gave challenge to the order passed by the Disciplinary Authority on various counts with regard to violation of principles of natural justice and also with regard to violation of mandatory provisions of the Rules of 1958. It was obligatory upon the Appellate Authority to consider all the contentions raised by the petitioner, may it be in brief, and to give a speaking and reasoned order.

The petitioner has given challenge to the order passed by Disciplinary Authority on following counts:-

> (1) The penalty imposed by the Disciplinary Authority is shockingly disproportionate to the delinquency alleged and, therefore, the same deserves to be modified in proportion to the delinquency held proved.
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> (2) The Disciplinary Authority while giving a copy of the inquiry report to the petitioner under communication dated 19.5.1995, mentioned that a major punishment is proposed to be imposed but has not referred the specific punishments proposed to be imposed, as such the petitioner failed to submit an effective statement with regard to proposed punishment. This amounts to denial of a valuable right of the delinquent employee to meet about the adequacy of proposed punishment.

(3) The inquiry conducted by the inquiring authority is laconic being conducted in violation of principles of natural justice and reasonable opportunity to the extent that ;

(i) no opportunity to avail assistance of defence counsel was given; and

(ii) the entire inquiry was conducted behind the back of the petitioner.

As I have already held the order of the Appellate Authority illegal, therefore, I do not consider it appropriate to adjudicate challenge to the order passed by the Disciplinary Authority on the grounds mentioned above except the ground No.2. All other grounds except the above one are required to be decided by the Appellate Authority while considering the appeal in accordance with rule 30 of the Rules of 1958.

The contention of the counsel for the petitioner is that the notice dated 19.5.1995 only mentions for imposing a major punishment. Under the Rules of 1958 there are various major punishments and every punishment is having different effect, therefore, according to the counsel for the petitioner the non-mentioning of specific major punishment proposed to be imposed amounts to violation of principles of natural justice and that makes the order imposing punishment illegal.

I do not find any merit in the contention raised by the counsel for the petitioner. The communication dated 19.5.1995 is not a notice seeking explanation with regard to proposed punishment but explanation is sought from delinquent employee with regard to findings given by the inquiry officer.

Prior to 42nd amendment of Constitution of India the provisions of clause(2) of Article 311 of the Constitution of India read thus:-

> "No such person as aforesaid shall be dismissed or removed or reduced in rank except after an enquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges and where it is proposed, after such inquiry, to impose on him any such penalty, until he has been given a reasonable opportunity of making representation on the penalty proposed, but only on the basis of the evidence adduced during such inquiry."

In view of the provisions of clause(2) of Article 311 of the Constitution of India prior to 42nd amendment it was obligatory for the Disciplinary Authority to provide a reasonable opportunity of making representation on penalty proposed. In the year 1976 by 42nd amendment of Constitution of India clause

(2) of Article 311 was altered and the amended clause (2) of Article 311 of the Constitution of India reads as under:-

> "311(2)No such person as aforesaid shall be dismissed or removed or reduced in rank except after an inquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges:
>
> [Provided that where it is proposed after such inquiry, to impose upon him any such penalty, such penalty may be imposed on the basis of the evidence adduced during such inquiry and it shall not be necessary to give such person any opportunity of making representation on the penalty proposed:"

After 42nd amendment of the Constitution of India opportunity of making representation on the penalty proposed was taken away and it is open for Disciplinary Authority to impose a penalty on the basis of evidence adduced during inquiry.

Under the Rules of 1958 also prior to 7.7.1983 it was obligatory upon the Disciplinary Authority to give the government servant an opportunity of making representation on the penalty proposed but an amendment was introduced in the Rules of 1958 w.e.f. 7.7.1983 and the requirement of giving an opportunity to represent for proposed punishment

was taken away from the Rules. After 42nd amendment of the Constitution of India and after corresponding amendment in the Rules of 1958 there is no need to give opportunity of making representation for proposed punishment.

It appears that there is a confusion with regard to right of having a reasonable opportunity to submit a representation with regard to proposed punishment with the requirement of supplying a copy of inquiry report with view to seek explanation from the delinquent employee.

Hon'ble Supreme Court in the case of Union of India and others v. Mohd. Ramzan Khan, AIR 1991 SC 471, held as under:-

> "13.Several pronouncement of this Court dealing with Art.311(2) of the Constitution have laid down the test of natural justice in the matter of meeting the charges. This Court on one occasion has stated that two phases of the inquiry contemplated under Art.311(2) prior to the 42nd amendment were judicial. That perhaps was a little stretching the position. Even if it does not become a judicial proceeding, there can be no dispute that it is a quasi-judicial one. There is a charge and a denial followed by an inquiry at which evidence is led and assessment of the material before conclusion is reached. These facets do make the matter quasi-judicial and attract the principles of

natural justice. As this Court rightly pointed out in the Gujarat case (AIR 1969 SC 1294), the disciplinary authority is very often influenced by the conclusions of the Inquiry Officer and even by the recommendations relating to the nature of punishment to be inflicted. With the Forty-Second Amendment, the delinquent officer is not associated with the disciplinary inquiry beyond the recording of evidence and the submissions made on the basis of the material to assist the Inquiry Officer to come to his conclusions. In case his conclusions are kept away from the delinquent officer and the Inquiry Officer submits his conclusions with or without recommendation as to punishment, the delinquent is precluded from knowing the contents thereof although such material is used against him by the disciplinary authority. The report is an adverse material if the Inquiry Officer records a finding of guilt and proposes a punishment so far as the delinquent is concerned. In a quasi-judicial matter, if the delinquent is being deprived of knowledge of the material against him though the same is made available to the punishing authority in the matter of reaching his conclusion, rules of natural justice would be affected. Prof. Wade has pointed out:

"The concept of natural justice has existed for many centuries and it has crystallised into two rules : that no man should be judge in his own cause; and that no man should suffer without first being give a fair hearing. They (the Courts) have

been developing and extending the principles of natural justice so as to build up a kind of code of fair administrative procedure to be obeyed by authorities of all kinds. They have done this once again, by assuming that Parliament always intends powers to be exercised fairly."

14.This Court in Mazharul Islam Hashmi v. State of U.P. (1979)4 SCC 537 : (AIR 1979 SC 1237) pointed out:

"Every person must know what he is to meet and he must have opportunity of meeting that case. The legislature, however, can exclude operation of these principles expressly or implicitly. But in the absence of any such exclusion, the principle of natural justice will have to be proved."

15.Deletion of the second opportunity from the scheme of Art.311(2) of the Constitution has nothing to do with providing of a copy of the report to the delinquent in the matter of making his representation. Even though the second stage of the inquiry in Art.311(2) has been abolished by amendment, the delinquent is still entitled to represent against the conclusion of the Inquiry Officer holding that the charges or some of the charges are established and holding the delinquent guilty of such charges. For doing away with the effect of the enquiry report or to meet the recommendations of the Inquiry Officer in the matter of imposition of punishment, furnishing a copy of the report becomes necessary and to have the proceeding

> completed by using some material behind the back of the delinquent is a position not countenanced by fair procedure. While by law application of natural justice could be totally ruled out or truncated, nothing has been done here which could be taken as keeping natural justice out of the proceedings and the series of pronouncements of this Court making rules of natural justice applicable to such an inquiry are not affected by the 42nd amendment. We, therefore, come to the conclusion that supply of a copy of the inquiry report along with recommendations, if any, in the matter of proposed punishment to be inflicted would be within the rules of natural justice and the delinquent would, therefore, be entitled to the supply of a copy thereof. The Forty-Second Amendment has not brought about any change in this position."

In light of law laid down by Hon'ble Supreme Court in the case of Mohd. Ramzan Khan (supra) a copy of the inquiry report is required to be given to delinquent employee before imposing a punishment. This is made necessary for the reason that the Disciplinary Authority uses the report of inquiry as an adverse material if the inquiry officer records a finding of guilt with regard to delinquent employee. If the delinquent is being deprived of knowledge of material against him though the same is made available to punishing authority in the matter of reaching his conclusion, the rules of natural justice would be effected. Thus, the explanation and comments are being

sought by Disciplinary Authority with regard to report of inquiry officer.

In the case of Mohd. Ramzan Khan (supra) Hon'ble Supreme Court held that the requirement of supplying a copy of the inquiry report is an integral part of principles of natural justice as a delinquent government servant must have knowledge of the material against him available with the punishing authority. The punishment is not required to be proposed by the inquiry officer, therefore, there is no need to convey proposed punishment and to give an opportunity to represent with regard to it. The acceptance of the contention raised by the counsel for the petitioner shall amount to adhere the position as it was existing prior to forty second constitutional amendment and that would certainly be against the intention of the legislature.

The Disciplinary Authority in present case by communication dated 19.5.1995 supplied a copy of inquiry report and sought comments from the petitioner qua that. The mentioning of proposed punishment was not at all required in the communication dated 19.5.1995 as no recommendation was made by inquiry officer as he is not permitted to do so under the Rules of 1958. In my considered opinion non-mentioning of specific proposed punishment in the communication dated 19.5.1995, therefore, is having no consequence.

Accordingly the contention made by the petitioner in this regard is negatived.

The petitioner has given challenge to the order dated 26.8.1995 on the count that forfeiture of salary amounts to imposition of a penalty and, therefore, the inquiry is required to be conducted to do so.

I do not find any force in this contention of the counsel for the petitioner. In fact the order dated 26.8.1995 is not an order of punishment but is an order in accordance with rule 54 of the Rules of 1951 which reads as under:-

> "54.Re-instatement.-(1)When a Government servant who has been dismissed, removed, compulsorily retired or suspended is re-instated or would have been re-instated but for his retirement on superannuation while under suspension, the authority competent to order the re-instatement shall consider and make a specific order:-
>
> (a) regarding the pay and allowances to be paid to the Government servant for the period of his absence from duty or for the period of suspension ending with the date of his retirement on superannuation as the case may be; and

(b) whether or not the said period shall be treated as a period spend on duty.

(2)Where such competent authority holds that the Government Servant has been fully exonerated or, in the case of suspension that it was wholly unjustified, the Government servant shall be given the full pay and dearness allowance to which he would have been entitled has he not been dismissed, removed or compulsorily retired as a penalty or suspended, as the case may be.

(3)In other cases, the Government servant shall be given such proportion of such pay and dearness allowance as such competent authority may prescribe.

(4)In a case falling under clause(2) the period of absence from duty shall be treated as a period spent on duty for all purposes.

(5)In a case falling under clause(3) the period of absence from duty shall not be treated as a period on duty unless such authority specifically directs that it shall be so treated for any specified purpose:

Note:-The order of the competent authority regarding the treatment of the period of absence from duty passed under this proviso is absolute and no higher sanction would be necessary for the grant of extra-ordinary leave in excess of three months in so far as temporary Government servant are concerned.

> Provided that if the government so desires, such authority may direct that the period of absence from duty shall be converted into leave of any kind due and admissible to the Government servant.
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> (6)In case where punishment order does not indicate as to whether the suspension period is to be counted for the purpose of pension. In all other cases, action shall be taken as per punishment order.
>
> (7)Any payment made under this rule to a Government servant on his reinstatement shall be subject to adjustment of the amount, if any, earned by him through an employment, business, profession or vocation during the period between the date of removal, dismissal or compulsory retirement, as the case may be, and the date of reinstatement. Where the emoluments admissible under this rule are equal to or less than the amounts earned during the employment, business, profession or vocation elsewhere, nothing shall be paid to the Government servant."

By the force of rule 54 of the Rules of 1951 the authority competent is empowered to take an appropriate decision with regard to adjustment of the salary of an employee on his reinstatement. However, while forfeitting the salary a justification is required to be given by the authority competent. No justification appears to have been given while doing so by the Superintendent of Police, Jodhpur vide the

order dated 26.8.1995. In view of it the order dated 26.8.1995 deserves to be quashed. However, it is left open for the competent authority i.e. the Superintendent of Police, Jodhpur to pass an order afresh in accordance with rule 54 of the Rules of 1951.

In view of whatever discussed above, this writ petition is accepted in part. The order passed by the Appellate Authority is hereby quashed. The Appellate Authority is directed to consider the appeal submitted by the petitioner afresh in accordance with rule 30 of the Rules of 1958. The Appellate Authority shall also consider all the contentions raised by the petitioner in his memo of appeal. The Appellate Authority is further directed to decide the appeal afresh within a period of six months from today. The order dated 26.8.1995 passed by the Superintendent of Police, Jodhpur forfeitting salary of the petitioner is also quashed with liberty to pass an order afresh in accordance with rule 54 of the Rules of 1951.

No order as to costs.

(GOVIND MATHUR),J.

kkm/ps.